

APPEAL NO. 032997
FILED DECEMBER 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 9, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001; and that because the claimant did not sustain a compensable injury, she did not have disability. The claimant appealed on sufficiency of the evidence grounds and the carrier responded, urging affirmance.

DECISION

Affirmed in part; reversed and rendered in part.

We have reviewed the complained-of injury determination and find that the hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed injury issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). Consequently, the hearing officer did not err in determining that the claimant has not had disability.

On the issue of timely notice, the hearing officer determined that the claimant did not notify the employer of a work-related injury not later than the 30th day after the alleged injury and that neither the employer nor the carrier were aware of the claimed injury until March 2003. According to the assistant manager's testimony at the CCH, she learned about the injury the day she and the claimant were unloading the store's truck. She said they were laughing and kidding around and the claimant made the comment, "well I think I hurt my back." The claimant didn't stop unloading the truck, and she didn't pull the assistant manager to the side, so the assistant manager didn't take her seriously and didn't do anything about it. The store manager testified that the assistant manager told her the first time she knew about the injury was when they were unloading the truck and the claimant was lifting a box and said "Oh, I think I hurt something" and then she kept on working. She further testified that the assistant

manager should have told her and then she could have taken care of it. Based on the above, we find that the hearing officer's determination that the claimant did not timely notify her employer of the claimed injury is against the great weight and preponderance of the evidence.

We reverse the hearing officer's decision and order that the carrier is relieved of liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001, and render a new decision that the carrier is not relieved of liability under Section 409.002 because the claimant did timely notify her employer pursuant to Section 409.001. This decision concerning timely notice does not, however, change the result in this case, as we affirm the hearing officer's decision and order that the claimant did not sustain a compensable injury on _____, and therefore did not have disability.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**NO, PRESIDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge